AB3 and AB6 were provided by the firm as security for the loan. In whatever way one views the transaction the terms of the contract have not been set out accurately in the promissory note at AB1. The claim therefore failed right from the start on that ground alone quite apart from the other breaches to which reference has already been made.

Judgment for the defendants.

Solicitors: *Ong Tiang Choon & Co.; P. Suppiah & Co.*

SUBRAMANIAM & ORS. v. COLLECTOR OF LAND REVENUE

[Appeals Board (Choor Singh J. Commissioner of Appeals), January 21, 1972]

[Singapore — Appeals Board No. 100 of 1967]

Land Laws — Compulsory acquisition — Compensation — Appeal against award — Determination of fair and correct award — Criteria used as a guide in ascertaining true market value of property — Land Acquisition Ordinance (Cap. 248) s. 10 — Land Acquisition Act, 1966, s. 23.

This was an appeal under section 23 of the Land Acquisition Act, 1966 by the owners of certain property who were aggrieved by the award made by the Collector of Land Revenue under section 10 of the Land Acquisition Ordinance (Cap. 248).

The subject property was acquired by the government under the provisions of the Land Acquisition Ordinance, (Cap. 248). Proceedings were commenced by declaration No. 2501 dated October 27, 1964, and published in the Government *Gazette* on December 22, 1964.

The property has a land area of 6,105 sq. ft. and was held on a lease for a period of 99 years from December 19, 1929. The ground rent reserved under the lease was $64 *per mensem*. On November 2, 1964, the lease had approximately 64 years unexpired.

The land was the site of a two-storey pre-war building providing three seperate units of accomodation — each let on a seperate rent controlled tenancy. The building has been demolished. It was constructed with brick walls, tiled roof and concrete lower floor. It had reinforced concrete beams supporting the upper floor which was of timber. The general state of the property was reasonable in relation to its age. The total gross annual rent income of the building was $3,131.64. The total annual value for property tax purposes was $3,085.

The site of the property is zoned in the 1958 Singapore Master Plan for residential use with a maximum density of 500 persons per acre. The existing use of the property was for residential and industrial *cum* commercial purposes; the major portion of the building being occupied by a bakery.

The depth of the property was approximately 70 feet, which differed from the majority of properties in the locality where the depth, after allowance for a backlane, was less than 70 feet and in some cases as little as 44 feet.

On March 24, 1965, the Collector of Land Revenue held an inquiry under section 10 of the Land Acquisition Ordinance (Cap. 248). The owners submitted a claim of $91,575 which was based on a value of $15 per sq. ft. The collector awarded a sum of $42,735 based on a value of $7 per sq. ft.

The owners filed a notice of appeal against the said award through their solicitors, in which they limited their claim to $71,400, based on a value of $11.70 per sq. ft.

On the question of comparables, evidence was given of recent sales of property in the vicinity. Expert evidence was given as to the various modes of valuation as a guide in ascertaining the true market value of the property. Two of the comparables cited by the expert witness called on behalf of the collector were disputed by the expert witness called on behalf of the appellants. The first was a valuation made for estate duty purposes and the second was for the sale by public auction of a property by trustees with the permission of the court wherein a reserve price had been fixed by the court.

On the request of the commissioner, evidence was also produced by the respondent of awards made in respect of several small lots acquired by the government in the vicinity of the subject property and which revealed that awards of $8 per sq. ft., $10 per sq. ft., $12.66 per sq. ft. and $16.54 per sq. ft. were made in respect of small single shop house lots totally devoid of any development potential.

Thus, the board had to consider the overall picture that emerged in the light of all the evidence and decide what was a perfectly fair and correct award in the circumstances of this case.

Held: (1) estate duty valuations are not a good guide in ascertaining the true market value of property. Such valuations are relevant and may be considered, but they do not carry the same weight as a genuine sale in the open market;

(2) the capitalization method used in valuing a rent controlled property cannot reflect the true value of property because the development potential of the property is entirely ignored in that method of valuation;

(3) the technique of taking two properties and making adjustments to arrive at the value of the second property is not a very satisfactory method of valuation especially when numerous adjustments have to be made;

(4) on the basis of all the evidence before the board, the award of $7 per sq. ft. in this case was inadequate and should be increased to $10 per sq. ft. As the subject lot has an area of 6,105 sq. ft., the award should be $61,050, and accordingly, the collector's award should be increased.

APPEALS BOARD.

M. Karthigesu for the appellants.

G. Starforth Hill for the respondents.

Cur. Adv. Vult.

Choor Singh J.: This is an appeal under section 23 of the Land Acquisition Act, 1966 by the owners of Lots 125-5, 125-4 and 125-3 of T.S. XV who are aggrieved by the award made by the Collector of Land Revenue under section 10 of the Land Acquisition Ordinance (Cap. 248).

The subject property was acquired by the Government under the provisions of the Land Acquisition Ordinance (Cap. 248). Proceedings were commenced by declaration No. 2501 dated the 27th October 1964 and published in the Government *Gazette* on the 22nd December 1964.

The property has a land area of 6,105 sq. ft. and was held on a lease for a period of 99 years from the 19th of December 1929. The ground rent reserved under the lease was $64 *per mensem*. On 2nd November, 1964, the lease had approximately 64 years unexpired.

The land was the site of a two-storey pre-war building providing three separate units of accommodation — each lot on a separate rent controlled tenancy. The building has been demolished but photographs of the demolished building as well as

photographs of other buildings in the area have been produced for comparison purposes. The total gross annual rent income of the building was $3,131.64. The total annual value for property tax purposes was $3,085. The building was constructed with brick walls, tiled roof and concrete lower floor. It had reinforced concrete beams supporting the upper floor which was of timber. The general state of the property was reasonable in relation to its age.

The site of the property is zoned in the 1958 Singapore Master Plan for residential use with a maximum density of 500 persons per acre. The existing use of the property was for residential and industrial *cum* commercial purposes; the major portion of the building being occupied by a bakery.

The land boundaries conformed with proposed backlanes. The front boundary was set back from the existing line of Palembang Road, presumably for the purpose of allowing for future road widening but in the meantime providing a parking forecourt for vehicles. The property was, in these respects, markedly different from the majority of properties in the locality, which were old back-to-back shophouses or properties served by backlanes which did not debouch on to a street.

The property had a total frontage of approximately 84 feet on Palembang Road and in this respect differed from the majority of properties in the locality which were single shophouses, many having a width of less than the bye-law minimum of 20 feet. Such properties were incapable of redevelopment on their own.

The depth of the property was approximately 70 feet which is a reasonable depth for commercial or residential purposes and in this respect the property differed from the majority of properties in the locality where the depth, after allowance for a backlane, was less than 70 feet and in some cases as little as 44 feet.

The Collector of Land Revenue held an inquiry under the provisions of section 10 of the Land Acquisition Ordinance (Cap. 248) on 24th March 1965. The owners submitted a claim of $91,575 which was based on the value of $15 per sq. ft. The collector awarded a sum of $42,735 based on a value of $7 per sq. ft. The owners filed a notice of appeal against the said award through their solicitors and in their petition of appeal also filed through their solicitors they limited their claim to $71,400 based on a value of $11.70 per sq. ft.

Before this board the only witness for the appellants was Mr. J.M. Carter, a chartered surveyor, chartered auctioneer and estate agent who was called as an expert witness. Mr. Carter was accepted as an expert witness by counsel for the respondent. The appellants rely entirely on the evidence of Mr. Carter. Briefly the substance of his evidence may be summarised as follows:—

"In general, the value of rent controlled property does not vary greatly from year to year, with the exception of those years when the market is particularly high or particularly low. The market was in a general state of inflation during the Korean war boom of 1950 and 1951 but this period is too far away from the date of valuation to have any bearing on the value of the property.

The market was reasonably healthy during the years 1954 to 1957. It was very depressed during the period 1958 to 1961. The market was reasonably healthy during 1962, good in 1963 and very good in 1964.

During the years 1965 to 1967, the market was relatively quiet due to the effect of confrontation.

It is therefore safe to consider sales evidence during the years 1954 to 1957 inclusive and also to consider sales evidence during the years 1962 to 1964."

There is evidence of the following sales:-

"1. *Nos. 491 and 493 Beach Road* was a corner property which conformed with the regular line of street and was served by a backlane. It had a disadvantage in that the depth was only 50 ft. The sale took place in December 1962 when the market could be regarded as normal. The property was sold at $15.64 per sq. ft.

2. *Nos. 106 and 108 Java Road* was comparable in all respects with Nos. 491 and 493 Beach Road. The sale took place in July when the market was normal and the price paid shows reasonably close agreement with the price paid for Nos. 491 and 493 Beach Road. The property was sold at $13.24 per sq. ft.

Both these properties are in many respects comparable with Nos. 91 to 92-A Palembang Road. Any advantage due to corner location being offset in at least some degree by the inevitable parking difficulties which attach to corner property.

3. *No. 138 Java Road* was a typical two storey shophouse in this area. The frontage was only 18 feet and the property was incapable of redevelopment on its own. It was served by a backlane but this lane did not connect with any road. The sale took place in November 1962, very close to the date of sale of Nos. 491 and 493 Beach Road. The property was sold at $9.08 per sq. ft. The difference in the sale values is a fair indication of the relative advantages and disadvantages of the respective properties.

4. *No. 573 Beach Road* had a frontage to Beach Road and a second frontage to Java Road but in due course approximately 11% of the area of the property would have to be surrendered for a backlane. The frontage on Beach Road was only 14 ft. and the frontage on Java Road 15 ft. In both instances this was less than the bye-law minimum width and the property was incapable of redevelopment on its own. The property was sold at $9.43 per sq. ft. The sale in July 1957 reflects a value very close to the value produced by the sale of 138 Java Road in November 1962, the properties being comparable in nearly all respects.

5. *Nos. 64 and 65 Palembang Road* was comparable in nearly all respects with Nos. 91 to 92-A Palembang Road. The property was located in approximately the same relationship to the nearest corner. Both properties conformed to backlane lines but Nos. 64 and 65 Palembang Road did not have the advantage of a forecourt parking area. The price of $13.96 per sq. ft. was paid by Government after lengthy negotiations for settlement of compensation in the acquisition of the property as at March 1957. The claimants were the same as the claimants in these proceedings. Nos. 64 and 65 Palembang Road were held on the same form of title as Nos. 91 to 92-A Palembang Road and the price agreed between the parties for Nos. 64 and 65 Palembang Road is an indicator of the price which the same parties might be expected to agree in the case of Nos. 91 to 92-A Palembang Road.

The sales evidence cited indicates reasonable agreement between market conditions and values in 1957 and at the end of 1962. The market in November 1964 was definitely better than any of these years. The pre-confrontation property boom in Singapore reached its height in the second half of 1964.

Valuation

On the basis of the evidence discussed earlier and with particular reference to the agreed price paid by Government for Nos. 64 and 65 Palembang Road, I am of the opinion that the market value of Nos. 91 to 92-A Palembang Road on

2nd November 1964 was $15 per sq. ft. This figure of value is supported by the sale of Nos. 106 and 108 Java Road in 1954 and the sale of Nos. 491 and 493 Beach Road in 1962. The market value of the subject property is therefore:-

6,105 sq. ft. at $15 per sq. ft. = $91,575
say $91,600 "

The principal witness for the respondent was Mr. Johnny Loh Jwee Siam who was called as an expert witness. Mr. Loh is an Associate of the Royal Institute of Chartered Surveyors of England. He was employed for many years by the Singapore Improvement Trust. Later he became a Lands Officer with the Housing & Development Board where he had to do land valuations. From the Housing & Development Board he went to the Development Bank of Singapore as its property manager and presently he is the property manager of the Port of Singapore Authority. Mr. Loh has done a considerable number of valuations and has given evidence before the Appeals Board in other appeals. He has been accepted as an expert in his field. Briefly, the substance of his evidence may be summarised as follows:—

"I have considered the recent sales of properties in the vicinity which are listed in the attached schedule of sales. Most of these sales are of properties on a land area ranging from about 500 sq. ft. to approximately 2,000 sq. ft. They are therefore not good comparables except for the sale of two properties of about 6,000 sq. ft.

One of these sales is of Nos. 87 to 91 Minto Road. This property has a frontage of about 90 ft. and a depth of about 66 ft. The total land area is 5,959 sq. ft. and the property had an unexpired term of about 63 years when it was auctioned for $25,000 or approximately $4.20 p.s.f. without vacant possession in October, 1963. The transaction was registered in January, 1964. The total annual value is $4,008. The two storey houses on the land are of brick and tile and in fairly good condition. The upper floors are used as dwellings and the ground floors are occupied for business and by an association. The sale was under an order of court which required that it should be sold for not less than the reserved price of $25,000.

The other sale is of Nos. 8 to 14 Aliwal Street at the junction of Aliwal Street and Pahang Road off Jalan Sultan. This property has a frontage of about 74 ft. and a depth of about 80 ft. The land area is 6,300 sq. ft. The houses are of two storey, constructed of brick and tile and are in fairly good condition. The houses are occupied for residential purposes except for the ground floor of No. 14 which is used as a coffee shop. The land tenure is of statutory grant. The property was auctioned for $38,000 or approximately $6 p.s.f. without vacant possession in May, 1964. The transaction was registered in July, 1964. The total annual value of the property is $2,523.

The Aliwal Street property is almost similar to the Palembang Road property in shape, area and situation. Both properties are over 6,000 sq. ft. in land area. However the width of Aliwal Street and that of Minto Road is narrower than that portion of the road fronting the Palembang Road property. The Minto Road property has a comparatively narrower road and is without a side or backlane. The transaction date of the Aliwal Street property is more recent to the material date in November 1964 than the Minto Road one.

In comparing the Aliwal Street property with the Palembang Road one, it is estimated that the Palembang Road property is about 20% to 30% better in situation. The building of the Palembang Road property with its very wide frontage at No. 92 and its reinforced concrete beams is a better building than the Aliwal Street property by about 10% to 15%. The total annual value of the Palembang Road property is more than that of the Aliwal Street property by $562 *per annum*. The value of a block of five houses behind the subject property at Nos. 101, 103, 107 109 and 111 Java Road was finally agreed between the owners and the Commissioner of Estate Duty for estate duty purpose at $42,350 or approximately $8.19 p.s.f. The valuation was at 11th September 1964. Of the five houses, one is of two storey and the others are of three storey. They are generally in good condition being occupied as family houses except for the ground floor of No. 111 which is let. The total annual value is $2,311. The property has a main frontage of about 88 ft. on Java Road and a depth of about 57 ft. on Sumbawa Road. The land area is 5,171 sq. ft. and the land title is held on statutory land grant. By comparison this property is freehold whereas the subject property is leasehold. The subject property is structurally better than the estate duty property. In my opinion the difference in the better construction of the subject property is between 5% and 10%.

On the comparative method of valuation, the adjustments to the value of the Aliwal Street property to arrive at the value of the Palembang Road property are as follows:-

Auction price of Aliwal Street freehold property			$6.00 p.s.f.
Add			
(a) enhanced site value, say	30%		
(b) better building, say	15%		
(c) higher rental income, say	15%		
	60%	=	$3.60 p.s.f.
			$9.60 p.s.f.
Conversion to a leasehold value of 64 years unexpired at 80%			x 0.8
			$7.68 p.s.f.
Land area			6,105 sq. ft.
Total leasehold value			$46,886.40
		say	$47,000.00
		or approx.	$7.70 p.s.f.

With reference to the estate duty valuation of the Java Road property, the subject property would be valued as follows:-

Estate duty property freehold value	68.10 p.s.f.
Conversion to a leasehold value of 64 years unexpired at 80%	x 0.8
	$6.55 p.s.f.
Add better structure at 10%, say	0.66
	$7.21
Land area	6,105 sq. ft.
Value of leasehold subject property	$44,017.00

Having regard to the above valuation and taking into consideration the other sales in the area I am of the opinion that the value of the subject property is $47,000."

Both Mr. Carter and Mr. Loh were cross-examined at great length but they stood their ground and maintained that the value they had placed on the subject property was in their opinion the correct one.

In my opinion two of the comparables cited by Mr. Loh do not reflect the true value of the properties concerned. First, the so-called estate duty property. It would appear that there was a dispute between the Commissioner of Estate Duty and the administrators of the estate of the deceased owner of the property as to the true value of this property at the date of the death of the deceased which took place on 11th September, 1964. The dispute was finally settled by both parties agreeing that the value be fixed at $42,350 which is approximately $8.19 per sq. ft. Con-

siderable reliance was placed by counsel for the respondent on section 33(2)(d) of the Act which provides as follows:—

"(d) in the case of any land in respect of which a value has been stated by or with the knowledge or consent of the owner thereof in any affidavit, return or other document required to be made or delivered to any public officer under the provisions of any written law and accepted by him at such value for the purposes of assessing the tax or duty payable thereon where such statement has been made within two years of the date of the declaration under subsection (1) of section 5 of this Act in respect of the land, the market value of such acquired land at the date of such statement shall be deemed not to exceed the value therein contained;"

The intention of the Legislature in enacting section 33(2)(d) of the Act quite obviously was that a person who has undervalued his property for estate duty purposes should not, in the event of the property being acquired later, be heard to say that his property was worth much more at the relevant date and that he should be bound by the value which he declared for estate duty purposes. I do not think that it was the intention of the Legislature that the owner's declared value should be binding on third parties. It is true that basically the requirement of the Estate Duty Ordinance is to establish the market value of the property at the date of the death of the owner, but nevertheless, it is a value which is never paid. It is an agreed value negotiated for estate duty purposes but it is not a price paid for the property. Estate duty valuations may or may not be correct. Without an investigation into the basis of the valuation, it is difficult to accept an estate duty valuation. The position would be quite different if the dispute went to the High Court where the matter would undoubtedly be investigated thoroughly. A finding by the High Court as to the true value of property for estate duty purposes stands on a completely different level from a valuation agreed between an owner and the Commissioner of Estate Duty. I do not think that such an agreed valuation can be placed at the same level as the open market value established by a genuine sale. Just as the administrator of an estate may undervalue the property in order to pay less estate duty, the commissioner may innocently and erroneously overvalue it and insist on a value which the property may not have fetched if it had been sold in the open market at the date of the death of the deceased. Furthermore, even though the administrator may not agree with the commissioner's valuation of the property, he may compromise and settle with the commissioner in order to expedite the administration of the estate of the deceased. For these reasons, I agree with Mr. Carter that estate duty valuations are not a good guide in ascertaining the true market value of property. Such valuations are relevant and may be considered but they do not carry the same weight as a genuine sale in the open market.

The second comparable which in my opinion does not reflect the true value of the property concerned was the sale by public auction of Nos. 87 to 91 Minto Road. This was a sale by trustees with the permission of the court. A reserve price of $25,000 was fixed by the court and at the public auction by some strange coincidence the property was sold at the price of exactly $25,000. Mr. Carter explained that in his experience the only time when such a thing happens is when there is either no bidder or only one bidder, and in that case the price is taken up to the reserve and knocked down to the single bidder. He explained further:—

"If I could, in fact, explain the reason why I feel that there is some doubt about whether this is entirely acceptable as evidence is because conditions vary almost from week to week as far as auctions are concerned. A property can be put up for auction one week and virtually obtain no bid at all. The next week the same property can be put up and sold successfully. In my experience, the conclusion that I would draw from this sale is that for some reason or other that was not a good auction day or auction week and it is probable the properties might not even reach the reserve. That is to some extent borne out by the fact that the Victoria Street property which was also valued in this valuation at $6,000 and which was offered for auction on exactly the same date was sold for $6,100 which is only $100 above the reserve. My experience is that if there is a real auction room, an active market in the auction room, the property will always go to something of a reasonable amount more than the reserve. If there is no active auction room the property will more often than not, not even reach the reserve but this coincidence to properties sold on the same day at virtually the same reserve does indicate to me that it is not a good auction."

The reserve price of $25,000 was fixed by the court on a valuation of the property made by Mr. Teo Yeok Soon of Aurora Auctioneers. Mr. Teo gave evidence before the board. He admitted that in valuing this property he used the capitalisation method; that his valuation was based entirely on the income the property was producing and that he did not take into consideration the values of other property in the neighbourhood. In my opinion the capitalisation method used in valuing a rent controlled property cannot reflect the true value of a property because the development potential of the property is entirely ignored in that method of valuation. Furthermore the valuation was made on 8th July 1963 and the property was auctioned four months later. Mr. Carter testified that there was at that period a rising market and that even if the valuation of $25,000 was correct, the property should have fetched much more than that because of the rise in the market by the time the property was auctioned. Mr. Loh agreed that there was a rising market in 1963 but Mr. Teo stated that the property could not have appreciated above $25,000 in the short period of four months. I am unable to accept Mr. Teo's evidence. The property was auctioned in October 1963 shortly after the formation of Malaysia. It is common knowledge that the property market was rising rapidly from the beginning of 1963 because of the prospects of Singapore entering Malaysia and with the formation of Malaysia it rose even further. In the light of all these circumstances, I do not consider that the sale of the Minto Road property at $25,000 which amounts to $4.20 per sq. ft. reflects the true value of the property in October 1963.

In assessing the value of the subject property at $47,000 Mr. Loh has relied almost entirely on the sale of the Aliwal Street property at a public auction six months before the relevant date. This property fetched $38,000 which is approximately $4 per sq. ft. As far as the frontage, depth and backlane features

are concerned this property is comparable with the subject property. But the two properties are not comparable when their use and siting are considered. The general development in Aliwal Street indicates very little or no commercial value over and above residential value in this street behind two main roads. It is true that the tenure of the Aliwal Street property is statutory land grant while the tenure of the subject property is a lease with 64 years unexpired, but the value of the former property is more affected by the fact that it is residential than by its title. When looking at Mr. Loh's computation one notices that he makes certain adjustments to the value of the Aliwal Street property to arrive at the value of the subject property. As a matter of general principle, when a valuer takes a sale and makes as many adjustments as Mr. Loh has made, one cannot help concluding that the particular property with which the valuer is starting, is not a comparable property. Secondly the adjustments depend so much on the independent judgment of the valuer. The percentage mentioned by Mr. Loh are pure surmise. They are figures of judgment but they are not founded on any fact. The only hard fact in Mr. Loh's computation is the statement that the annual value of the subject property is more than that of the Aliwal Street property by $562 which means that the income produced by the subject property is 22% more than that of the Aliwal Street property and yet in his computation Mr. Loh makes an adjustment of only 15% in this respect. The technique of taking two properties and making adjustments to arrive at the value of the second property is in my opinion not a very satisfactory method of valuation especially when numerous adjustments have to be made as in the case of the subject property when compared with the Aliwal Street property. The same applies to Mr. Loh's comparison of the Java Road property with the subject property. As the adjustments are a matter of opinion the more adjustments the valuer has to make the larger the margin of error. I agree with Mr. Carter that in view of the large number of adjustments that have to be made in comparing the Aliwal Street and Java Road properties with the subject property, the two former properties are not fair comparables.

On the other hand Mr. Carter in valuing the subject property at $15 per sq. ft. has relied almost entirely on the sale in December 1962 of 491 and 493 Beach Road at $15.64 per sq. ft. and the sale of 106 and 108 Java Road in July 1964 at $13.24 per sq. ft. Reliance is also placed on the acquisition of 64 and 65 Palembang Road by the Government in March 1957 at $13.96 per sq. ft. For the acquisition of 491 and 493 Beach Road the Government made an award of $41,250 which is $16.64 per sq. ft. and for the acquisition of 106 and 108 Java Road the Government made an award of $37,500 which is $15.05 per sq. ft. The Beach Road and Java Road properties are better sited than the subject property but it is difficult to assess this advantage in terms of money. The subject property has been awarded $7 per sq. ft. Having considered all the respective advantages and disadvantages I do not think that it can be seriously contended that the Beach Road and the Java Road properties are worth more than twice the value of the subject property in terms of value per square foot. In my opinion such a contention is entirely untenable. Again, it is difficult to understand the Government's contention that the subject property was in November 1964 worth only $7 per sq. ft. when seven years earlier the Government paid $13.96 per sq. ft. for a property belonging to the same owner in the same street a few doors away from the subject property. I asked counsel for the respondent to produce evidence to show how the value of $13.96 per sq. ft. was arrived at in 1957 but he was unable to do so. No satisfactory explanation was forthcoming. All that counsel could say was that it was a negotiated settlement after an award and that the payment of $13.96 per sq. ft. was an overpayment.

In the course of these proceedings the board requested evidence to be produced by the respondent of awards made in respect of several small lots acquired by the Government in the vicinity of the subject property. This evidence revealed that the Government has made awards of $8 per sq. ft., $10 per sq. ft., $12.66 per sq. ft. and $16.54 per sq. ft. in respect of small single shophouse lots totally devoid of any development potential. Unfortunately, the collector who made these awards was not available to give evidence before the board and the buildings on these lots cannot be inspected because they have been knocked down. It is not known what factors in each of these cases influenced the collector in making these awards which are far in excess of the award of $7 per sq. ft. for the subject property.

The board has to consider the overall picture that emerges in the light of all the evidence and decide what is a perfectly fair and correct award in the circumstances of this case. Both parties to the dispute have shifted their position. Although the appellants' valuer maintained that the subject property was at the relevant date worth $15 per sq. ft. the appellants are now prepared to accept $11.70 per sq. ft. On the other hand, although the collector's award was $7 per sq. ft. the respondent is now prepared to increase the award to $7.70 per sq. ft.

It is not known why the appellants have limited their claim to $11.70 per sq. ft. when their expert witness is of the view that the property was worth $15 per sq. ft. at the relevant date. Furthermore it is not known how the value of $11.70 per sq. ft. is arrived at.

The board's task in this case is not an easy one. There has been no actual sale of the subject property. The next best data would be sales of properties with similar characteristics in the same road at about the same date. Again no such date is available. The nearest comparable in my opinion is the award of $13.96 per sq. ft. for the acquisition of 64 and 65 Palembang Road in March 1957 but this award has been described by counsel for the respondent as "the odd man out." When seen in the light of the subsequent awards for properties in this area, this award of $13.96 per sq. ft. does appear to have been an overpayment but it is difficult to assess the extent of

the overpayment. On the other hand the market in 1964 was definitely better than that in 1957. The pre-confrontation property boom reached its height in the second half of 1964. The value of the subject property in November 1964 was therefore at its peak and consequently was more than the value in 1957.

On the basis of all the evidence before the board in this case, and having taken into consideration the submissions made by both counsel, I am of the opinion that the award in this case is inadequate and that it should be increased to $10 per sq. ft. As the subject lot has an area of 6,105 sq. ft. the award at the rate of $10 per sq. ft. amounts to $61,050. The collector's award of $42,735 is accordingly increased to $61,050.

Order accordingly.

Solicitors: *Allen & Gledhill; Rodyk & Davidson.*

MALAYSIAN REPORTS

GOVERNMENT OF THE STATE OF SELANGOR v. CENTRAL LORRY SERVICE & CONSTRUCTION LTD.

[O.C.J. (Mohamed Azmi J.) April 26, 1971]

[Kuala Lumpur — Civil Suit No. 502 of 1968]

Practice and Procedure — Discovery and inspection — Government contract — File containing tender documents — Whether privileged — R.S.C., 1957, O. 31 — Evidence Ordinance, 1950, s. 126(1).

Evidence — Privilege — Government contract — Tender documents — Evidence Ordinance, 1950, s. 126(1).

The defendants had successfully tendered for certain drainage works for the sum of $172,224.40. As a result of their failure to complete the works, the plaintiff had to invite a second tender. One Soon Tat & Co. successfully tendered for the sum of $241,906.40. Consequently the plaintiff claimed a sum of $113,983.15 alleged to be due from the defendants. The defendants applied for discovery and inspection of the file relating to the second tender/contract, in particular, the tender documents of Soon Tat & Co. and all the other contractors who also tendered for the second contract. The plaintiff objected to the application, except in so far as to the contract and tender documents relating to Soon Tat & Co., on the ground of privilege under section 126(1) of the Evidence Ordinance.

Held: the file in question was not privileged against discovery and inspection by the defendants.

Cases referred to:-

(1) *Chadlick* v. *Bowman* (1886) 16 Q.B.D. 561.

(2) *Wheeler* v. *Le Marchant* (1881) 17 Ch. D. 675 at p. 681.

SUMMONS IN CHAMBERS.

Abdul Razak bin Dato' Abu Samah (Legal Adviser, Selangor) for the plaintiff.

Wong Soon Foh for the defendants.

Cur. Adv. Vult.

Mohamed Azmi J.: This is an application by summons in chambers by the defendants in Kuala Lumpur Civil Suit No. 502 of 1968 for discovery and inspection of documents under Order 31 of the Rules of Supreme Court. The relevant application is for an order that the plaintiff be ordered to produce for inspection the file relating to the second tender/contract, in particular, the tender documents of Messrs. Soon Tat & Company and all the other contractors who also tendered for the second contract. Counsel for the plaintiff, the Government of the State of Selangor, objected to the application (except in so far as to the contract and tender documents of Messrs. Soon Tat & Company) on the ground of privilege under section 126(1) of the Evidence Ordinance. In support thereof, the plaintiff filed an affidavit sworn by one Gan Ching Lim, the State Drainage and Irrigation Engineer Selangor, dated April 22, 1971. Paragraph 6 of the affidavit states: —

"I object to produce the file relating to the second contract on the ground that the said file which has been set forth in the second part of the first schedule to the affidavit of documents filed on 15th October, 1970 are from their nature privileged."

After hearing arguments from both counsel and having perused the pleadings (and, incidentally, the